

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL BAIL APPLICATION NO. 3429 OF 2022**

Mohd. Muzaffar Mistry @ Sohail

... Applicant

V/s.

The State of Maharashtra

... Respondent

Mr.C.J. Joveson a/w. Mr.Surya Srivastav & Mr.Arvind Nair i/b. Ms.Deepa Devadiga for Applicant.

Mr.Ajay Patil, A.P.P for Respondent-State.

P.S.I. Mr.V.S. Sawant, Sewree Police Station, Mumbai is present.

CORAM : A. S. GADKARI, J.

DATE : 16th March 2023.

P.C. :

1. This is a successive application for bail under Section 439 of Criminal Procedure Code (for short, "Cr.P.C.") in C.R. No. 62 of 2016 dated 7th July 2016 registered with Sewree Police Station, Mumbai under Sections 379, 461, 285 of Indian Penal Code (*for short, "I.P.C."*), Section 15(2) of Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (*for short, "P.M.P Act"*) and Section 3 of Prevention of Damage to Public Property Act, 1984.

2. Heard Mr. Joveson, learned Advocate for Applicant and Mr.Patil, learned A.P.P for Respondent-State. Perused record.

3. This is third application preferred by the Applicant for bail. The first application for bail bearing Bail Application No. 2820 of 2018 was

dismissed as withdrawn by an Order dated 1st April 2019. The second application i.e. Bail Application (Stamp) No. 1757 of 2020 was also dismissed as withdrawn by Order dated 23rd October 2020. In Order dated 23rd October 2020, the statement of learned A.P.P. that, the Applicant is involved in about 11 other cases of similar type, i.e. under Section 379 I.P.C. and there are in all 19 antecedents at the discredit of the Applicant was recorded. In this precise background, the present application is preferred by the Applicant for bail under Section 439 of Cr.P.C..

4. Mr.Patil, learned A.P.P. for Respondent-State fairly submitted that, the Trial Court has not framed charge under Section 395 of I.P.C. and the Applicant is facing charges under Sections 461, 285 of I.P.C. and Section 15(2) of P.M.P Act.

5. It is an admitted fact on record that, in the present crime, the Applicant came to be arrested on transfer warrant on 12th July 2016 and since then for last about six and half years, he is behind bars. The maximum sentence prescribed under Section 15(2) of P.M.P Act is 10 years of imprisonment.

6. As noted earlier, the Applicant has undergone about more than six and half years of pre-trial incarceration as of today. In last about six and half years, though the charge has been framed, the prosecution has examined only one witness till today. The likelihood of completion of trial of the present case in near future is remote.

7. In view of above, the Applicant is entitled to be released on bail under Section 436A of Cr.PC..

Hence the following Order :

- (i) Applicant be released on bail in C.R. No. 62 of 2016 dated 7th July 2016 registered with Sewree Police Station, Mumbai on his executing P.R. bond in the sum of Rs.50,000/- (Rupees Fifty Thousand Only) with one or two solvent local sureties in the like amount.
- (ii) After his release from jail and till final disposal of trial, the Applicant is directed to attend Sewree Police Station on every alternate Monday of the month initially for a period of one year and thereafter on every first Monday of the month between 11:00 am and 1:00 pm.
- (iii) Applicant is also directed to attend all the dates before the Trial Court unless precluded on medical grounds and permitted by the Trial Court.

8. Application is allowed in the aforesaid terms.

[A.S. GADKARI, J.]

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